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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Number FWS–HQ–ES–2013–0055]

[FXES111809F2070B6]

RIN 1018–AY76

Endangered and Threatened Wildlife and Plants; Listing the Southern White Rhino (*Ceratotherium simum simum*) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), determine to list the southern white rhino (*Ceratotherium simum simum*) as threatened under the

authority of section 4(e) of the Endangered Species Act of 1973, as amended (Act), due to the similarity in appearance with the endangered Javan (*Rhinoceros sondaicus*), Sumatran (*Dicerorhinus sumatrensis*), Indian (*Rhinoceros unicornis*), black (*Diceros bicornis*) and northern white rhino (*Ceratotherium simum cottoni*). Differentiating between the horns and other products made from the southern white rhino and the endangered Javan, Sumatran, Indian, black, and northern white rhino is difficult for law enforcement, decreasing their ability to enforce and further the provisions and policies of the Act. This similarity of appearance has resulted in the documented trade of listed rhinoceros species, often under the guise of being the unprotected southern white rhinoceros, and this difficulty in distinguishing between the rhino species protected under the Act and the southern white rhino constitutes an additional threat to all endangered rhinoceros species. The determination that the southern white rhino should be treated as threatened due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve all endangered rhino species.

DATES: This rule becomes effective on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The reasons for this accelerated implementation and for

making this rule effective less than 30 days after publication in the **Federal Register** are described below in the section titled “Need for Interim Rule.”

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow instructions for submitting comments to Docket No. FWS–HQ–ES–2013–0055.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: **[FWS–HQ–ES–2013–0055]**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials concerning this rule by one of the methods listed in the ADDRESSES section. We will not accept comments sent by e-mail or fax or to an address not listed in the ADDRESSES section. If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Executive Summary

Purpose of the Regulatory Action: We are listing the southern white rhino (*Ceratotherium simum simum*) as threatened under the “similarity of appearance” provisions of the Endangered Species Act of 1973, as amended (Act). Horns and other products made from this species and other rhinoceros species listed as endangered under the Act are difficult for law enforcement to distinguish, which makes it difficult for law enforcement personnel to enforce and further the provisions and policies of the Act. The determination that the southern white rhino should be treated as threatened due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve all endangered rhino species.

Major Provisions of the Regulatory Action: This action is authorized by the Endangered Species Act of 1973 (Act), as amended, 16 U.S.C. 1531 et seq. We are amending subpart B of chapter I, title 50 of the Code of Federal Regulations §17.11(h), by adding the southern white rhinoceros to the List of Endangered and Threatened Wildlife due to a similarity of appearance.

Background

Poaching and the illegal trade in rhinoceros horn pose serious threats to all rhinoceros species worldwide. A significant increase in demand for rhinoceros horn for medicine in southeast and east Asia, notably Vietnam and China, is the primary factor

driving the trade (Cavaliere 2010, unpaginated; Milliken et al. 2009, p. 9; Robinson 2009, p. 3; Mills 1997, p. 1). Rhino horn has historically been utilized in traditional Chinese medicine (TCM) for a wide variety of ailments, including fever, convulsions, and delirium (Cavaliere 2010, unpaginated; Bell & Simmonds 2006, p. 15; Mills 1997, p. 2; But *et al.* 1990, p. 158; Laurie 1978, p. 2). In 1981, China became a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and due to international pressures, China enacted the *Notice Promulgated by the State Council on the Prohibition of Trade in Rhinoceros Horn and Tiger Bone* in 1993, which banned domestic and international trade in rhino horn and tiger bone, including derivatives and their use in TCM pharmacopeia (CITES n.d., unpaginated; Mills 1997, pp. 3–4). Since then, the use of rhino horns for medicinal purposes has been widely discouraged by TCM practitioners (Huang L. 2011, p. 2; Robinson 2009, p. 5). Despite a lack of scientific evidence supporting the medicinal properties of rhino horn, a recent resurgence of interest has occurred throughout Asia for its purported value as a cancer treatment (Gwin 2012, unpaginated; Rivera & Thomas 2012, unpaginated). Although this rumor has been widely repudiated by the western scientific and medical community as well as by the TCM community, this rumor has contributed to the increased demands on the illegal market and has thus promoted the illegal poaching of rhinos.

Another factor influencing the poaching and illegal trade of rhino horns is an increased interest and demand for libation cups and other rhino horn carvings (such as dagger handles). Traditionally, libation cups and dagger handles carved out of rhino horn have held historic and symbolic significance in Chinese and Middle Eastern cultures (Vigne & Martin 2000, pp. 91, 98; Martin 1990, p. 13). Additionally, some mention has been made of libation cups having anti-poisoning properties (Groves and Leslie 2011, p. 203; Lang 2011, unpaginated; Laurie 1978, p. 2).

According to the United Nations Office on Drugs and Crime (UNODC), rhino horn has emerged in the black market as a rare and valuable commodity with street prices equal to those of gold, at roughly USD \$65,000 per kilogram (UNODC 2012, p. 5). In southern Africa, this growing market demand is fueling dramatic increases in rhino poaching. In Europe, multiple thefts of rhino horns from antique dealers, auction houses, art galleries, private collectors, zoos, museums, taxidermists, and game reserves have been documented (USFWS Office of Law Enforcement (OLE) pers. comm. 2012; Viscardi 2012, p. 10; Europol 2011, p. 1). In some instances, physical assaults have occurred (Viscardi 2012, p. 10). Since 2007, more than 65 stolen horns have been reported (Shaw 2012, p. 4). FWS sources have reported that poachers are increasingly well-connected in the field and in consumer countries; they are equipped with GPS units, cell phones, and weapons, and appear to be working for syndicates that equip them with clothes, vehicles, and detailed information on rhino distribution and rhino behavior.

Rhino horns move rapidly across international borders, evading detection through well-resourced, organized, politically powerful syndicates (USFWS 9: M. Gadd, unpubl. document 2011; Milliken 2009, p. 4). This transition from ordinary poachers to well-resourced, transnational organized crime groups has created additional challenges for law enforcement personnel (UNODC 2012, pp.1, 6).

In the United States, OLE has observed a dramatic increase in demand for rhino horns. The OLE has information that these horns are being funneled to Southeast Asia to meet regional demand. In 2010, the Service's OLE arrested two Irish nationals engaged in the unlawful trade in rhinoceros horns. These individuals, who were later convicted, had traveled from Europe to the United States to procure and smuggle rhino horns for the illegal trade. In 2012, the OLE, in coordination with several other agencies, confiscated 37 rhino horns and a number of carved rhino horn products (U.S. Department of Justice 2012, unpaginated).

Previous Federal Actions

Under the Endangered Species Conservation Act of 1969, the predecessor to the Act, the Javan (*Rhinoceros sondaicus*), Sumatran (*Dicerorhinus sumatrensis*), and northern white (*Ceratotherium simum cottoni*) rhinos were listed as endangered, effective June 2, 1970 [35 FR 8491–8498]. The Indian rhino was also later listed as endangered under the Endangered Species Conservation Act of 1969, effective Dec. 2, 1970 [35 FR

18319–18322]. In 1974, the Javan, Sumatran, and northern white rhinos were subsequently included on the Federal List of Endangered and Threatened Wildlife as endangered species under the Act. The black rhino was listed as endangered under the Act, effective August 16, 1980 [45 FR 47352–47354, July 14, 1980]. Currently, the southern white rhino is the only subspecies of rhinoceros not listed under the Act. On January 17, 2012, the OLE requested that the southern white rhino be listed as a threatened species based on the similarity of appearance provisions of section 4(e) of the Act and our implementing regulations at 50 CFR 17.50.

Species Overview

Rhinoceroses occur in Asia and Africa. Africa has two distantly related genera of rhinos, the white rhino and the black rhino. Asia is home to the Javan rhino, the Sumatran rhino, and the Indian rhino.

White Rhino (*Ceratotherium simum*)

Species Description: Currently, two subspecies of white rhino are recognized, the southern white rhino (*Ceratotherium simum simum*) and the northern white rhino (*Ceratotherium simum cottoni*). These subspecies are distinguished primarily by geographical range differences but also maintain some morphological distinctions,

including small differences in cranial measurements, teeth shape and size, and skin folding patterns (Groves *et al* 2010, pp. 3–10). White rhinos on average weigh between 1,500 to 2,400 kilograms (kg) (3,300–5,300 pounds (lb)), and have an immense body with a relatively large head, which is supported by a prominent muscular hump (Groves *et al* 2010, pp. 8, 10; Groves *et al* 1972, p. 3). Typical height at the shoulders can range from 1.71 to 1.85 meters (m) (5–6 feet (ft)), and the length of the spine can span 2.45 to 2.84 m (8–10 ft) (Groves *et al.* 2010, p. 9). The white rhino is estimated to have a lifespan of 40 to 50 years in captivity (Burnette 2011, unpaginated; Rookmaaker 1998, p. 22). A feature unique to the white rhino is its relatively broad, square-lipped mouth, which is adapted for grazing practices (Groves *et al.* 1972, p. 1). The white rhino maintains the distinction of producing the largest horns recorded, both in length and in diameter (Groves 1971, p. 250). Both the northern white rhino and the southern white rhino have two horns. The frontal horn (anterior) of the northern white rhino is the largest and averages 37 to 40 inches in length; the southern white rhinos' frontal horn is more variable and can range 37 to 79 inches. White rhinos' second horn (posterior) is smaller and may reach lengths of up to 22 inches (Rhino Resource Center (RRC) n.d.(b), unpaginated).

Geographic Range and Population:

Southern white rhino (C. s. simum): The current combined wild and captive southern white rhino population is estimated to be 20,160 individuals (Emslie & Knight

2011, p. 8). Current southern white rhino populations within their natural range are in Botswana, Namibia, South Africa, Swaziland, and Zimbabwe. Additionally, three countries, including Uganda, Kenya, and Zambia, maintain nonnative populations (USFWS 9: M. Gadd, pers. comm. 2013).

Historically, the southern white rhino had a large range that included Angola, Botswana, Malawi, Mozambique, Namibia, South Africa, Sudan, Swaziland, and Zimbabwe (USFWS 9: M. Gadd, pers. comm. 2013; Emslie & Brooks 1999, pp. 9–10). This subspecies has an unusual past; in fact, the population trends have been the opposite of the trends for every other species of rhino. In 1895, this subspecies was considered extinct until a small population of less than 20 individuals was discovered in the Umfolozi-Hluhluwe region in Natal, South Africa (Emslie & Brooks 1999, p. 10). Due to increased protections, numbers began to substantially increase. By 1948, the numbers had increased to 550; by 1984, to 3,800; by 1997, the population had grown to 8,440; and the 2012 estimate is 20,160 (Emslie & Brooks 1999, p. 10; Emslie & Knight 2011, p. 8). This growth in population has been due in large part to the successful conservation efforts and anti-poaching programs established by both the South African Government and private landowners.

Northern White Rhino (C. s. cottoni): The northern white rhino has seen the opposite trend with regard to its population status. In 1960, the population of northern white rhinos was estimated to be 2,230; in 1984, the estimated population decreased to 15

individuals (Emslie & Brooks 1999, p. 9). This species' historical range included northwestern Uganda, southern Chad, southern Sudan, the Democratic Republic of Congo and eastern Central African Republic (Emslie & Brooks 1999, p. 7). The last known wild population of northern white rhinos were located in the Democratic Republic of the Congo; however, despite extensive searches, no live sightings have been reported since 2006, nor have signs of their presence been reported since 2007 (Emslie 2011, unpaginated). It is, therefore, likely that this species has become extinct in the wild. The last remaining captive population of four individuals was relocated from Dvur Kralove Zoo in the Czech Republic to a private sanctuary in Kenya where it is hoped that they will be able to successfully reproduce with the aid of southern white rhinos (Emslie 2011, unpaginated; Emslie & Knight 2011, p. 8).

Black Rhino (*Diceros bicornis*)

Species Description: The black rhino weighs between 800 and 1,350 kg (1,750–3,000 lbs), stands 1.4 to 1.7 m (4.5–5.5 ft) at the shoulder, and has an average length of 3 and 3.8 m (10–12.5 ft). The average lifespan for a black rhino is between 30 and 40 years, although the oldest recorded captive individual lived to 44 years, 9 months (Rhino Resource Center (RRC) n.d.(a), unpaginated). The black rhino shares the same color as that of the white rhino; it is primarily grey-brown. Other than its smaller stature, the

black rhino differs from the white rhino in its prehensile pointed hooked lip, which aids in the browsing of leaves and bushes. Like the white rhino, black rhinos have two horns; the anterior horn averages 0.5 to 1.3 m (18–52 inches) while the posterior horn can measure 0.02 to 0.55 m (1–22 inches) in length (RRC n.d.(a), unpaginated).

Geographic Range and Distribution: Worldwide, there are an estimated 4,880 black rhinos in the wild; and in 2005, 240 were reported in captivity (Emslie 2012, unpaginated; Emslie & Knight 2011, p. 8). Specific subspecies population approximations include 1,920 *D.b. bicornis*, 740 *D.b. michaeli*, and 2,220 *D.b. minor* (Emslie 2012, unpaginated). The current range of *D.b. bicornis* is restricted to Namibia and South Africa; *D.b. michaeli* is thought to be limited to Kenya and Tanzania; and *D.b. minor*'s stronghold is currently South Africa, to a lesser extent Zimbabwe, with a few remaining in Tanzania (Emslie 2012, unpaginated). Historical ranges include Cameroon, Chad, southern Sudan, Ethiopia, Somalia, Kenya, Tanzania, Namibia, Angola, Botswana, South Africa, Zimbabwe, Mozambique, Democratic Republic of Congo, Zambia, Rwanda, Swaziland, Malawi, and Uganda (Emslie & Brooks 1999, pp. 3, 5). It is believed that the population of black rhino in 1900 exceeded 100,000; reports have described them as so numerous that the governments considered them an agricultural pest. By 1980, however, the population dropped to 14,785. In 1995, the black rhino population hit an all-time low of 2,410 individuals (Emslie 2011, p. 8; Gadd 2011, p. 2; Emslie & Brooks 1999, p. 5).

Indian Rhino (*Rhinoceros unicornis*)

Species Description: The Indian rhino is one of the three species of Asian rhino and has the largest population due to considerable conservation efforts. The Indian rhino weighs between 1,599 and 2,132 kg (3,525–4,700 lb); stands at 1.59 to 1.86 m high at the shoulder (5.2–6.1 ft); and averages 4.12 m in length (13.5 ft) (Laurie *et al.* 1983, p. 1; Groves 1982, p. 16). The Indian rhino has an estimated lifespan of 40 to 50 years. This species, along with the Javan rhino, is distinct from the African rhino species in that each individual has only one horn (Groves 1971, pp. 242–246). The length of the horn ranges from 0.2 to 0.6 m (8–24 inches) in length. The Indian rhino has a prehensile upper lip, which is used for pulling branches and leaves into its mouth; this species also consumes grasses and pulls its upper lip tight against its mouth to form a hard square lip similar to that of a cow (Groves 1982, p. 20).

Geographic Range and Distribution: The historical range of Indian rhinos once included Nepal, Bangladesh, Bhutan, Myanmar, southern China, possibly Indochina, India, and Pakistan.

The current estimated population of Indian rhinos is 2,716 individuals in India and 534 individuals in Nepal, for a total of 3,250. Their current stronghold country is India, particularly in the state of Assam wherein it is estimated the population is over

2,000; plans are in place to increase this to 3,000 by the year 2020 (Singh 2012, p. 1).

The large majority of Indian rhinos occupy various national parks and are highly protected. March 2012 estimates include 2,290 rhinos in Kaziranga National Park, 93 individuals in Pabitora Wildlife Sanctuary, 100 individuals in Orang National Park, and 22 in Manas Tiger Reserve (which have been translocated from Pabitora Wildlife Sanctuary and Kaziranga National Park since 2006). Other populations in India include 42 in Gorumara National Park; 140 in Jaldapara Wildlife Sanctuary; and 29 in Dudhwa National Park. In Nepal, Chitwan National Park has an estimated 503 rhinos, Bardia National Park has reported 24 individuals, and Suklaphanta Wildlife Reserve is estimated to contain 7 individuals.

Javan Rhino (*Rhinoceros sondaicus*)

Species Description: The Javan Rhino weighs between 1,200 and 2,280 kg (2,650–5,025 lbs), stands 1.20 to 1.70 m (3.9–5.6 ft) in height, and ranges between 3.05 and 3.44 m (10–11.3 ft.) in length (Groves 1982, p. 16). The average lifespan of the wild Javan rhino is unknown; however, records have shown a captive individual having reached the age of 21 years (Groves & Leslie 2011, p. 198). The Javan rhino has a mouth similar to that of the black rhino, with a pointed upper lip that exhibits almost prehensile abilities in browsing for leaves, shoots, and twigs of mostly woody species (Groves & Leslie 2011, p. 199). The Javan rhino has only a single anterior horn, which averages 20

to 25 cm (7.9–9.8 inches) in length. Horns primarily occur in males, although rare observations have recorded their presence in females (Regan 1987, p. 706; Groves 1982, p. 16; Groves 1971, pp. 243–246).

Geographic Range and Distribution: A single population of Javan rhino, consisting of fewer than 40 individuals, is located in Ujung Kulon National Park in Java. The individual from Cat Loc National Park in southern Vietnam was killed in 2011, most likely due to poaching as its horn had been removed (Brook 2012, p. 64; Sargent 2011, unpaginated). Historical records indicate the species' range at one time may have included Ujung Kulon, Sumatra, Borneo, Malaya, Perak, Thailand, Burma, Laos, China, Cambodia, Vietnam, India, and Bangladesh.

Sumatran Rhino (*Dicerorhinus sumatrensis*)

Species Description: The Sumatran rhino is the smallest rhino species with a weight between 600 and 950 kg (1,300–2,000 lbs). It stands only 1 to 1.5 m in height (3–5 ft) and is 2 to 3 meters in length (6.5–9.5 ft) (RRC n.d.(d), unpaginated). Wild Sumatran rhinos are believed to have an average lifespan of 30 to 45 years; however, the oldest individual in captivity lived to 28.5 years (VanStrien *et al* 2008, unpaginated). The Sumatran rhino is the only Asian rhino to have two horns; the anterior horn measures 0.25 to 0.79 meters in length (0.83–2.58 ft), while the posterior horn is much smaller with an average length of 0.1 meters (0.25 ft). This species of rhino is distinct from other

species in that it retains its incisors as well as its canine teeth (CAC 2012, unpaginated).

Sumatran rhinos also have the distinction of being the hairiest rhinos, are a reddish brown color, and have tufted ears (VanStrien *et al* 2008, unpaginated; Agil 2007, p. 14).

Geographic Range and Distribution: Current population estimates of Sumatran rhinos range between a minimum of 220 and a maximum of 275 individuals; 10 are currently in captivity, although 96 have been recorded in the past 200 years. Their current range includes selected national parks throughout Indonesia, Malaysia, Sumatra, and Borneo. Some of them include Way Kambas, Bukit Barisan Selatan, Gunung Leuser, Taman Negara, and Tabin Wildlife Reserve. The historical range included Myanmar (Burma), Lao PDR, Vietnam, Thailand, Malaysia, the Indonesian islands of Sumatra and Borneo, and northeastern India. Historical population numbers and native geographic range states are estimated as many historical records failed to distinguish between Asian rhino subspecies (Van Strien *et al* 2008, unpaginated).

Horn Morphology

Rhino horn shape and color vary depending on a variety of factors. Although extensive research has been conducted and published regarding the chemical and genetic composition of rhino horns from each of these species, generally these differences cannot be detected visually by law enforcement personnel. Rhinoceros horns are similar in appearance between species and subspecies; most are homogenous in appearance, and all

are composed of the protein keratin. Generally, horns range in color from tan to brown to black. Shengqing *et al* (2010) determined the color of rhinoceros horn products to be shades of brown, intact rhinoceros horn to be shades of yellow, and ground powder to be gray-white (Shengqing *et al* 2010, p. 637). According to Groves (1972), “in wild specimens the horn is colored like the body, dark grey or even black, darker on the stem than on the base, darker in Asiatic rhinos, and darker in adults than in juveniles” (Groves 1972, p. 239). Differences in horn size can be misleading as they depend on the age, gender, and species of the individual; additionally, horn shape is influenced by external factors such as living in captivity. Additional identification challenges arise when rhino horns are carved into libation cups, dagger handles, or other ornaments, and such processing can make the determination of species almost impossible. Thus, only with genetic testing can individual horns be definitely linked to specific species.

Current Regulatory Mechanisms

Many range states protect their rhino populations. The primary conservation method is through the physical protection of rhinos existing in state-run conservation areas such as national parks and wildlife sanctuaries. Researchers estimate that more than seventy-five percent of African rhino populations are within these types of facilities (Emslie & Brooks 1999, p. 16). However, due to increased poaching within these protected areas, additional measures have had to be taken. Translocation has been a

major component in conservation of live rhinos. For example, in Zimbabwe, vulnerable rhinos were moved to safer locations in response to poaching and other threats (Milliken *et al* 2009, p. 9). Some range states have attempted to reduce the number poached by tranquilizing rhinos and removing their horns; unfortunately, there have also been reports of poachers killing and removing even the smallest stumps from these animals. Range states and private owners have thus accumulated stockpiles of rhino horn that need to be carefully managed (Milliken *et al* 2009, pp. 10–11). Despite these conservation measures, the rate of poaching in stronghold locations, namely South Africa, has continued to rise in unprecedented rates. In South Africa, which contains approximately 80 percent of the world's rhinos, poaching levels increased from only 13 in 2007 to 448 in 2011; South Africa reported 668 rhinos poached in 2012 (Republic of South Africa 2013, unpaginated; UNODC 2012, p. 5; Milliken & Shaw 2012, p. 11).

Impacts of Poaching on Private Land Owners and Commercial Live-Rhino Operators

Private landowners have made a large contribution toward rhino conservation through private ownership and custodian agreements on behalf of range states, and account for almost 25 percent of the African rhino populations (Emslie and Brooks 1999, p. 16). These landowners and companies contribute to the conservation of rhinos through tourism, live rhino sales, and limited trophy hunting of surplus bulls and/or elder females (Emslie & Brooks 1999, p. 18). Private owners contribute roughly 20,000 sq km

(4,942,110 acres) of land toward rhino conservation efforts. Due to increased poaching over the last 6 years, rhino protections costs have sharply risen. During the same time period, the prices for live rhinos have dropped 11 percent . Live rhino sales include sales of live rhinos at auction and live rhino darting activities for hunters. Privately owned populations and the overall live rhino industry are losing capital and have begun to perceive it as possibly too risky of a venture to continue (Knight 2012, pp. 12–13). The possible loss of these privately owned lands has the potential to result in overcrowding or higher population densities within protected areas (Knight 2012, pp. 12–13), which are already under siege from poachers.

CITES

On Jan. 7, 1975, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) included the Northern white, Javan, Sumatran, and Indian rhinoceros on Appendix I. Species listed as CITES' Appendix I are considered threatened with extinction which are or may be affected by trade, and international trade is permitted only under exceptional circumstances. Trade in Appendix I specimens for primarily commercial purposes is generally precluded. The black rhino was listed in Appendix II on January 7, 1975, which includes species that are not necessarily now threatened with extinction, but may become so unless trade is subject to strict regulation to avoid utilization incompatible with the species' survival. International trade in

specimens (dead or live) of Appendix I and II species is authorized through a system of permits or certificates under certain circumstances. This process includes verification that trade will not be detrimental to the survival of the species in the wild, and that the material was legally acquired (www.cites.org).

On April 2, 1977, the black rhino was reclassified to Appendix I, and the Southern white rhino was added to Appendix I. Since 1977, the implementation of effective management techniques in several countries, most notably South Africa, increased the southern white rhino populations to a viable number. Thus, in 1995, the South African population of southern white rhino was reclassified to Appendix II for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and in hunting trophies. Similarly, in 2005, the Swaziland population of southern white rhino was also listed on Appendix II for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and in hunting trophies. All other specimens of southern white rhino are considered to be listed in Appendix I and are regulated under CITES as such.

Currently, all rhino species and subspecies are listed in CITES Appendix I, except the South African and Swaziland populations of southern white rhinos, which are listed as Appendix II. This listing has provided South Africa and Swaziland the ability to trade internationally in white rhino hunting trophies and in live white rhinos to appropriate and acceptable destinations. Additionally, with the adoption of Resolution Conference 13.5

in 2004, South Africa and Namibia have been permitted to export five trophy-hunted black rhinos (*D. bicornis*) annually.

Live Rhino and Rhino Horn Imports and Exports

Under Appendix II of CITES, live specimen trade is legal provided the trade is conducted with regard to “appropriate and acceptable destinations.” Swaziland populations have been traded as part of a project to expand base populations over the last few years (Milliken *et al.* 2009, p. 7). The discrepancies in trade volumes include some inexplicable anomalies. Between 2006 and 2009, according to CITES data, South Africa exported 193 live rhinos. However, data from importing countries indicate that at least 235 live rhinos were received from South Africa. In the case of live rhino export to China, South Africa reported exporting 61 rhinos in 2006 and 2007, while China recorded receiving 117 rhinos from South Africa during the same time (Milliken *et al.* 2009, p. 7). Rumors about rhino farming in China and campaigns to encourage the use of rhino horn resulted in South Africa putting a moratorium being placed on live rhino exportations. This resulted in a Memorandum of Understanding (MoU) between the South African Government and the Socialist Republic of Vietnam, signed in December of 2012, which promotes law enforcement coordination, increased compliance with CITES regulations, and places restrictions on trade and exportation of certain rhino products.

Poaching and the Inadequacy of Existing Regulatory Mechanisms

Trends in poaching over the last 5 years have demonstrated that current regulatory mechanisms and conservation efforts are inadequate to respond to the growing market for rhino horn products. In 2007, only 13 cases of poaching in South Africa were documented. However, in 2010, these figures increased to 333, and in 2011, the South African Government reported poaching of 448 rhinos (Milliken and Shaw 2012, p. 11). The South African Government reported 668 rhinos poached during 2012 (Republic of South Africa 2013, unpaginated). Poachers have been increasingly advanced in their methods with the illegal misappropriation of or reuse of gaming licenses; helicopters and tranquilizer guns appropriated from veterinary facilities have also been used (Viscardi 2012, p. 10). Additional regulatory enforcement mechanisms are needed to address this escalating issue.

Facilitation of Enforcement

As explained in more detail under the section titled “**Otherwise Prohibited Activities and Permitting Requirements,**” this interim rule will apply all of the prohibitions for threatened species found at 50 CFR 17.31 to the southern white rhino. These prohibitions, under 50 CFR 17.31, would, in part, make it illegal for any person subject to the jurisdiction of the United States, to deliver, receive, carry, transport, or ship southern white rhino specimen(s) in foreign or interstate commerce, by any means

whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate and foreign commerce any specimen of southern white rhino.

In light of the significant demand for acquiring rhino specimens within the United States for movement into the Asian black market, extending the Act's prohibitions relating to commerce to the southern white rhino under the similarity of appearance provisions will substantially facilitate law enforcement actions to protect and conserve all listed rhino species by curtailing unauthorized commerce in endangered rhino specimens. Presently, with the southern white rhino being the only subspecies of rhino that is not listed under the Act, unauthorized commerce in listed rhino specimens within and through the United States occurs with individuals able to purposefully or accidentally misrepresent that specimens of endangered rhino are specimens of the Southern white rhino. Thus, this similarity of appearance listing will eliminate this loophole in enforcing the Act's protections for listed rhino species by extending the Act's prohibitions regarding certain commerce activities to all rhino species, unless such activities are properly authorized.

Similarity of Appearance

Under section 4(e) of the Act, the Secretary, acting through the Service, "may, by regulation of commerce and taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed

pursuant to section 4 of the Act if the Secretary finds that—(a) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.” Due to the similarity of appearance of rhino horns, parts, and products from all rhino species, law enforcement personnel are unable to determine the species, much less the population, from which the rhino horn, part, or product was derived. When rhino horn or product is carved or modified, such as into a libation cup, the ability to make the determination of legality is further compromised. This is the primary justification for this similarity of appearance listing.

In addition, this difficulty in distinguishing a specimen of endangered rhino species from a specimen of the southern white rhino is an additional threat to the rhino species listed under the Act. The Service has information indicating that unauthorized commerce involving parts and products of listed rhino species is being conducted via the United States by persons who purposefully or accidentally misrepresent that specimens have originated from the southern white rhino. Thus, the difficulty in distinguishing endangered rhino specimens from specimens of southern white rhino is resulting in specimens of listed rhino species entering the global black market via the United States.

This illegal movement of endangered rhino parts and products via the United States is contributing to the market demand for such items. With the increasing market demand for rhino parts and products and the street value of rhino horn now being roughly estimated at \$65,000 per kilogram, this flourishing black market is stimulating unprecedented levels of poaching, and, indeed, this recent upsurge in rhino poaching coincides precisely with the renewed consumer demand for rhino parts and products (See discussion under “Background”).

Lastly, as previously discussed, listing the southern white rhino pursuant to the Act’s similarity of appearance provisions will facilitate the enforcement and further the policy of the Act. This action will stem an enforcement problem that has contributed to the unauthorized commerce of endangered rhino specimens from the United States, thereby ameliorating the threat to endangered rhino species from illegal trade and providing for the conservation of these species listed under the Act.

Effects of This Interim Rule

Otherwise Prohibited Activities and Permitting Requirements

Section 4(d) of the Act specifies that, for threatened species, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Under this authority, the Service has promulgated certain regulations at 50 CFR 17.31. Specifically, 50 CFR 17.31 provides that the prohibitions

for endangered wildlife under 50 CFR 17.21, with the exception of 17.21(c)(5), also apply to threatened wildlife unless a special rule has been developed under section 4(d) of the ESA. The prohibitions of 50 CFR 17.31 include, among others, take, import, export, and shipment in interstate or foreign commerce in the course of a commercial activity of a threatened species.

Under the Act's similarity of appearance provisions, the Secretary may, "to the extent he deems advisable, treat any species as an endangered species or a threatened species even though it isn't listed pursuant to section 4 of [the] Act...". Furthermore, the Service's regulations implementing the Act's provisions on similarity of appearance provide that all of the regulatory provisions found at subpart D, which include the general prohibitions for threatened species, shall apply, as appropriate, to any species listed pursuant to the similarity of appearance provisions. See 50 CFR 17.51(a). Thus, exercising this discretion, the Service has determined that all of the prohibitions under 50 CFR 17.31 shall apply to the southern white rhino, which is being designated as a threatened species under the similarity of appearance provisions of section 4(e) and the Service's implementing regulations at 50 CFR 17.50. This designation due to similarity of appearance under section 4(e) of the Act, however, does not extend other protections of the Act, such as consultation requirements for Federal agencies under section 7 and the recovery planning provisions under section 4(f) that apply to species that are listed as endangered or threatened under section 4(a).

Although the general permit provisions for threatened species are found at 50 CFR 17.32, the Service issues permits for otherwise prohibited activities involving endangered or threatened species listed due to similarity of appearance under the regulatory criteria at 50 CFR 17.52. Under 50 CFR 17.52, a permit may be issued for any otherwise prohibited activity if the applicant adequately identifies the wildlife or plant in question so as to distinguish it from any endangered or threatened wildlife or plant.

In the case of the southern white rhinoceros, the Service's criteria to issue such a permit or other authorization would consist of the permit applicant providing adequate information to document that the specimen involved in the activity is a southern white rhinoceros. Such documentation could consist of a CITES export permit issued by a country that is party to CITES, veterinarian reports, a breeder's statement, qualified appraiser's statements, or other documentation that shows the species identification and the origin of the specimen.

Further, pursuant to section 9(c)(2) of the Act, noncommercial importations into the United States of threatened species that are listed under CITES Appendix II and taken and exported in accordance with CITES are presumed not to be in violation of any provision of the Act or any regulation under the Act, provided that applicable requirements under sections 9(d), 9(e), and 9(f) are met. For southern white rhinoceros exported from South Africa or Swaziland, which are currently the only populations of

southern white rhinoceros listed in Appendix II of CITES, no ESA regulatory permit for importation is required, provided that the specimen was legally exported from one of those two countries, the importation was not made in the course of a commercial activity, and other applicable requirements are met. Therefore, a sport-hunted trophy of southern white rhino, legally taken and exported from South Africa or Swaziland, would not require a separate ESA regulatory permit to import it into the United States. However, the sport-hunted trophy will still be subject to the provisions of CITES, and, therefore, a CITES Appendix II permit from the country of export will still be required. It should be noted, however, that due to the “use after import” restrictions under the CITES regulations (50 CFR 23.55), southern white rhinoceros imported as a sport-hunted trophy or for other noncommercial purposes could not be subsequently sold or otherwise entered into commerce.

Need for Interim Final Rule

Under section 553(b) of the Administrative Procedure Act (APA), we have good cause to find that the delay associated with public comment on a proposed rule to list the southern white rhino under the Act’s similarity of appearance provisions would negatively impact the conservation of endangered rhino species listed under the Act and, therefore, is contrary to the public interest. With this action, the southern white rhino will receive immediate protections afforded to species through the regulation of commerce

under the Act. This immediate protection is necessary to deter trade in currently listed rhino species that would otherwise occur via the United States during the intervening time period required to finalize a rulemaking under the APA's public notice and comment procedures. This illegal trade via the United States is contributing to a black market that continues to attract poachers, resulting in an upsurge in the unsustainable killing of endangered rhino species. In light of the critically low abundance levels and restrictive ranges of all of the rhino species currently listed under the Act, immediate measures to curtail some of the trade in rhino specimens is necessary to alleviate the pressures to the species associated with poaching for the global black market.

Based upon the rationale noted above for applying the APA's exemption to the notice and comment requirements to this rulemaking in the interest of the public, we also have good cause to waive the standard 30-day effective date for this rule consistent with section 553(d)(3) of the APA. A 30-day delay in the effective date of this rule would result in elevated levels of trafficking in parts and products of listed rhino species and in accompanying increases in poaching of endangered rhino species during the intervening time period between publication of this rule in the **Federal Register** and its date of effectiveness. If there were a 30-day delay before this published listing rule took effect, persons could seek to take advantage of the regulatory loophole caused by the similarity of appearance with the southern white rhino before this impending regulation under the Act became effective. Thus, under this scenario, the Service reasonably believes a spike

in the illegal trade and poaching of endangered rhino species could occur with this delay.

While we are taking these immediate steps to protect these species, we invite public comment as set forth in DATES and ADDRESSES.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible. If you feel that we have not met these requirements, send us comments by one of the methods listed in ADDRESSES. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us page numbers and the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

The Service has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA). The Council on Environmental Quality's (CEQ) regulations implementing NEPA, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on the human environment. CEQ's regulations further require federal agencies to adopt NEPA procedures, including the adoption of categorical exclusions for which neither an environmental assessment nor an environmental impact statement is required, 40 CFR 1507.3. The Service has determined that this interim rule is categorically excluded from further environmental analysis under NEPA in accordance with the Department's NEPA regulations at 43 CFR 46.210(i), which categorically excludes "[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature...". In addition, the Service has determined that none of the extraordinary circumstances listed under the Department's regulations at 43 CFR 46.215,

in which a normally excluded action may have a significant environmental effect, applies to this interim rule.

References Cited

A complete list of all references cited in this interim is available on the Internet at <http://www.regulations.gov> or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Author

The primary author of this interim rule is the staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203 (see FOR FURTHER INFORMATION CONTACT).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for “Rhinceros, southern white” in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* * * * *							
Rhinoceros, southern white	<i>Ceratotherium simum simum</i>	Botswana, South Africa, Swaziland, Zambia, Zimbabwe	Entire	T(S/A)		N/A	N/A
* * * * *							

Date: August 2, 2013

Dan Ashe

Director, U.S. Fish and Wildlife Service

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